No. 85-328 (2)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

JUDITH WARNICK and CHARLES WARNICK,

Petitioners,

vs.

JIN CHA, M.D., INDIANA DEPARTMENT OF INSURANCE, and DON H. MILLER, as Commissioner of Insurance of the State of Indiana,

Respondents.

BRIEF OF RESPONDENTS MILLER AND INDIANA DEPARTMENT OF INSURANCE IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

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STATEMENT OF THE QUESTION PRESENTED

Whether the Court lacks jurisdiction to grant the writ prayed for because the decision of the Indiana Supreme Court is based upon an adequate and independent state ground not subject to review by this Court.

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
JURISDICTION	1
STATEMENT OF THE CASE	2
ARGUMENT:	
The Court Lacks Jurisdiction to Grant the Writ Prayed For	2
CONCLUSION	4

TABLE OF AUTHORITIES

Case:	*Page:*
Cha v. Warnick, 455 N.E. 2d 1165 (Ind. App., 1983)	2
Fox Film Corporation v. Muller, 296 U.S. 207, 56 S.Ct. 183 (1935)	3
Laffey v. Northwest Airlines, Inc., 740 F.2d 1071 (D.C. Cir., 1984)	3
Michigan v. Long, ___ U.S. ___, 103 S.Ct. 3469 (1983)	3, 4

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JURISDICTION

Respondents Miller and Indiana Department of Insurance urge that this Court lacks jurisdiction to issue the writ prayed for because the decision of the Indiana Supreme Court rests on an adequate and independent state ground impervious to review by this Court.

STATEMENT OF THE CASE

Petitioners brought this action in the State Courts of Indiana pursuant to Indiana's Declaratory Judgment Act, seeking a declaration that Indiana's Medical Malpractice Act was unconstitutional. Petitioners had previously filed a medical malpractice action against Dr. Cha in the Lake County Circuit Court on March 26, 1982. That action resulted in a default judgment against Cha which was appealed. On November 16, 1983, the Indiana Court of Appeals vacated the default judgment and remanded that case to the trial court for further proceedings. *Cha v. Warnick*, 455 N.E.2d 1165 (Ind. App., 1983). The Indiana Supreme Court denied transfer in that case on March 16, 1984. The above facts are recited in the Indiana Supreme Court's decision of the instant case at pp. 3-4 of the Appendix to Petitioners' Brief. Thus, while the instant declaratory judgment action has been in progress, Petitioners have at all times had their prior action for damages against Respondent Cha in progress as a separate case.

ARGUMENT

THE COURT LACKS JURISDICTION TO GRANT THE WRIT PRAYED FOR

The Indiana Supreme Court found that Petitioners had previously raised their objections to the Indiana Medical Malpractice Act in their separate action for damages, when that (earlier) case was before the Indiana Court of Appeals, and that the Court of Appeals had ruled against the instant Petitioners in that case, following which the Indiana Supreme Court denied transfer. Appendix to Petitioners' Brief, pp. 23-24. The Petitioners made no effort, in that prior case, to petition for review in this Court.

Because of the decision by the Indiana Court of Appeals in the earlier case, which was adverse to Petitioner's constitutional claims, and the Indiana Supreme Court's denial of transfer, the Indiana Supreme Court held that under Indiana's "law of the case" doctrine, "Since Plaintiffs [Petitioners herein] presented these same constitutional questions before this Court at that time, *they therefore are*

bound by the holdings in their first appeal." Appendix to Petitioners' Brief, p. 24 (emphasis supplied).

The Indiana Supreme Court explained Indiana's "law of the case" doctrine as follows: "[A]n appellate court's determination of a legal issue is binding on both the trial court and the Court of Appeals in any subsequent appeal given the same case and substantially the same facts. [Citations omitted]." Appendix to Petitioners' Brief, pp. 22-23. That is, since Petitioners had already litigated their constitutional claims in the appeal arising out of their action for damages against respondent Cha, they could not seek to avoid that result merely by initiating a separate and later action for declaratory judgment. Thus Indiana's "law of the case" doctrine was sufficient to determine the result of this case in the Indiana Supreme Court.

This Court has long recognized that "where the judgment of a state court rests upon two grounds, one of which is federal and the other non-federal in character, our jurisdiction fails if the non-federal ground is independent of the federal ground and adequate to support the judgment." *Fox Film Corporation v. Muller*, 296 U.S. 207, 210, 56 S.Ct. 183, 184 (1935), cited in *Michigan v. Long*, ___ U.S. ___, 103 S.Ct. 3469, 3474 fn. 4 (1983). *Michigan v. Long* contains an extended discussion of the question of this Court's jurisdiction where an adequate and independent state ground is asserted, and concluded that jurisdiction did exist where the state decision appeared "to rest primarily on federal law, or to be interwoven with the federal law." 103 S.Ct. 3476.

Such is not the case here. The Indiana Supreme Court cited only Indiana cases in its explanation of the "law of the case" doctrine. The doctrine is entirely a doctrine governing the binding nature of decisions by the Indiana Courts. The fact that other court systems, including the federal system, see, e.g., *Laffey v. Northwest Airlines, Inc.*, 740 F.2d 1071 (D.C. Cir., 1984), may have similar doctrines cannot give rise to an inference that the doctrine is compelled by, or interwoven with, any other body of law save the law

governing appellate procedure, collateral estoppel, res judicata, and similar matters in the Indiana Court system.

The Indiana Supreme Court was unswayed by the statistical analysis and evidence by which Petitioners sought to prove that Indiana's Medical Malpractice Act created such delays for malpractice plaintiffs as to constitute a denial of access to the Courts and hence a violation of their constitutional rights. It held the act not violative of the federal constitution. This clearly was a federal ground of decision. But the Court also held that Plaintiffs' claims were foreclosed by the Indiana version of the "law of the case" doctrine. This doctrine, which forwards important state interests in the finality of judgments and avoidance of duplicative and piecemeal litigation, is an adequate and completely independent basis for the Indiana Supreme Court's decision. Accordingly, under the analysis of *Michigan v. Long, supra*, this Court has no jurisdiction to grant the writ prayed for.

CONCLUSION

Respondents Miller and the Indiana Department of Insurance therefore respectfully urge that the writ of certiorari be denied.

Respectfully submitted,

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